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Kenneth E. Flick

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04/01/2008

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH E. FLICK

Appeal 2007-2993
Application 10/649,267
Technology Center 2600

Decided: March 28, 2008

Before JOSEPH F. RUGGIERO, JOHN A. JEFFERY,
and KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

INTRODUCTION

Appellant's Request for Rehearing (filed Feb. 15, 2008) contends that we erred in our Decision on Appeal, entered December 17, 2007, in which we entered new grounds of rejection of claims 1, 10, 17, 26, and 32.

OPINION

In our Decision, we rejected claims 1, 10, 17, 26, and 32 under 35 U.S.C. § 103(a) as unpatentable over Nykerk (US 5,315,285) in view of

Zwern (US 5,245,694) and Leen (*Expanding Automotive Electronic Systems*, IEEE Computer, Vol. 35, Issue 1, 88-93, Jan. 2002), and unpatentable over Boreham (US 6,005,478) in view of Zwern and Nykerk, using our authority under 37 C.F.R. § 41.50(b).

We respond to the specific points raised by Appellant against the rejections below. Additionally, Appellant argues that we have failed to take into account the advantages of the claimed invention. Appellant points out that the Specification makes clear that the security devices are installed without replacing or substantially modifying the existing vehicle security systems. (Req. for Reh’g. 2). While we acknowledge the teachings of the Specification, we can find nothing in the rejected independent claims that limits our interpretation of the recited limitations to these specific considerations. Appellant is reminded that there is a distinction between “using the specification to interpret the meaning of a claim and importing limitations from the specification into the claim.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (*en banc*). Although Appellant refers to the recited upgrading method of claim 32, (Req. for Reh’g. 2), we find no error in our rejection of that claim which relies on prior art which collectively amply suggests “upgrading” a vehicle security system by utilizing, among other things, a data bus extended throughout the vehicle. Thus, we do not find this argument to be dispositive.

Appellant also argues that the recited common housing facilitates easier aftermarket installation of the security device as compared to the prior art approaches. (Req. for Reh’g. 3). We deal with Appellant’s arguments regarding the common housing with respect to the specific rejections below

and we do not find this argument to be dispositive in view of the collective teachings of the prior art.

Also, we note that Appellant refers to limitations found in dependent claims 5 and 13 in Appellant's arguments. However, since only the independent claims have been rejected, we consider these arguments to be inapposite. As we indicated in our opinion (Maj. Op. 19), we have left the patentability determination of the dependent claims to the Examiner. Therefore, Appellant's arguments, addressing limitations in the dependent claims, are simply not germane to our rejection.

I. *Whether the new ground of rejection of claims 1, 10, 17, 26, and 32 under 35 U.S.C. § 103 over Nykerk, Zwern and Leen is proper.*

Appellant argues that we have misapprehended and overlooked the clear teaching away between Nykerk, Zwern and Leen. Appellant contends that Nykerk teaches away from the selective swapping of a wiring harness for a controller area network by teaching the selective powering of other devices. (Req. for Reh'g. 6-7). Appellant contends that selective powering is cited as an advantageous power saving feature in Nykerk, but such advantages would allegedly be lost by combining the prior art references as we have asserted in the rejection. Appellant further contends that ordinarily skilled artisans would be counselled away from the combination.

While we appreciate Appellant's argument, we do not find it to be dispositive. Keen recites that network systems, although requiring greater power loads, provide benefits in terms of fuel consumption. (Keen, p. 92). Thus, even if we assume, without deciding, that power savings of Nykerk "could" be lost through the combination as Appellant asserts, Keen provides

that other benefits can accrue that would mitigate such losses. Thus, in view of this engineering trade-off, we find that one of ordinary skill in the art would have combined the references as provided in the rejection for the reasons stated, even in view of the possible loss of power savings. As such, we affirm the efficacy of the combination of Nykerk, Zwern and Leen to teach all of the elements of claims 1, 10, 17, 26 and 32.

Additionally, Appellant argues that combining the systems into a single housing, per Zwern, would impede the ability of the proximity sensor in Nykerk to function properly and would change the principle of operation and teach away from the combination. (Req. for Reh'g. 7-9). However, we do not find that the proffered combination would be rendered unfit for its intended purposes, even though it could reduce its effective range. Any combination of technologies can result in trade-offs, but that does not necessarily prove that those combinations should not be considered. As discussed above, Leen specifically mentions such trade-offs. We find that the benefits of the use of a common housing could have effectively weighed against the possible reduced effective range of the proximity sensor, and one of ordinary skill in the art would have combined Nykerk, Zwern and Leen as indicated in the rejection of the independent claims.

Appellant also alleges that the motivation proffered in the rejection applying the combination of Nykerk, Zwern and Leen “amounts to a conclusory statement of obviousness.” (Req. for Reh'g. 8). To the contrary, we find that the rejection supplies “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007), quoting *In re Kahn*, 441 F.3d, 977, 988 (Fed. Cir. 2006). Appellant also argues that “both

Nykerk and Zwern purposefully chose to avoid interfacing with [a vehicle data bus],” (Req. for Reh’g. 9), but there is no evidence in either reference that the inventors are “rejecting” such buses. As such, we do not find Appellant’s arguments to be compelling.

Appellant also separately argues the merits of claim 10, based on its recitation of a pre-warn emulator, and Appellant argues that the cited references fail to teach or suggest this feature of claim 10. (Req. for Reh’g. 9-10). However, we do not find that a pre-warn emulator needs to satisfy the functions described in dependent claim 13, as Appellant suggests, and the pre-warn emulator need only generate signals responsive to the sensed high security threat level, per claim 10. Zwern clearly recites elements equivalent thereto:

An additional important feature of the present invention resides in the use of a microprocessor means to control the invention, which allows those minimally skilled in the art to easily modify its software to cause the invention to be further enhanced with additional features, or to be customized to respond to different truth tables or to different sets of security alarm system signals as inputs. Such customization allows the invention to be conveniently used in a wide variety of security alarms and other awareness generating applications with suitable activation means available. (Zwern, col. 7, ll. 19-30).

As such, we affirm the rejection of claims 1, 10, 17, 26 and 32 as being obvious in view of Nykerk, Zwern and Leen.

II. *Whether the new ground of rejection of claims 1, 10, 17, 26, and 32 under 35 U.S.C. § 103 over Boreham, Zwern and Nykerk is proper.*

With respect to this latter rejection, Appellant repeats many of the same arguments made against the former rejection. (Req. for Reh'g. 10-13). Namely, Appellant argues that there is clear teaching away from the combination of Boreham, Zwern and Nykerk because of the power savings described in Nykerk and because the use of a common housing from Zwern would decrease the functionality of the combination. As we have found above, we acknowledge these teachings, but do not find them sufficient to counsel one of ordinary skill in the art from making the combination of Boreham, Zwern and Nykerk asserted in the rejection.

Appellant also argues the patentability of claim 10 separately from the other independent claims rejected, on a similar basis, i.e. that a pre-warn emulator is not taught or suggested by the cited prior art. As we found above, we find that Zwern provides adequate disclosure for one of ordinary skill in the art to have created a system with a pre-warn emulator as recited in claim 10. As such, we affirm the rejection of claims 1, 10, 17, 26 and 32 as being obvious in view of Boreham, Zwern and Nykerk.

CONCLUSION

In summary, we have granted Appellant's Request for Rehearing to the extent that we have reconsidered our decision entering the new grounds

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of rejection of claims 1, 10, 17, 26, and 32, but we deny the Request with respect to making any changes therein.

DENIED

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